

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

EDWARD REINHART,

Plaintiff,

v.

Civil No. 1:11-CV-809
(MAD/DRH)

CITIMORGAGE, INC., also known as
CitiMortgate, Inc.; JOHN DOES 1-10,

Defendants.

APPEARANCES:

EDWARD REINHART
Plaintiff pro se
698 County Route 353
Rensselaerville, New York 12147

**DAVID R. HOMER
U.S. MAGISTRATE JUDGE**

REPORT-RECOMMENDATION AND ORDER

On July 14, 2011, plaintiff Edward Reinhart ("Reinhart" or "plaintiff") paid the court's filing fee and filed a complaint (Dkt. No. 1) naming the above-captioned defendants. However, it appears from the docket that defendants have never been served with process or otherwise appeared in the action. Pursuant to this Court's Text Order dated 11/18/2011, Reinhart was granted an extension of time to complete service of the complaint on or before January 15, 2012. Reinhart has failed to file with this Court any proof of service on the named defendants.

Pursuant to Fed. R. Civ. P. 4(m), service of process upon defendants was not completed within the 120 days allowed by Rule 4(m) and the complaint should be dismissed without prejudice for that reason; see also N.D.N.Y.L.R. 4.1(b). In addition, it is noted that Local Rule 41.2(a) of this District provides that the failure of a plaintiff to take any action in a case for four

(4) months shall be presumptive evidence of lack of prosecution. N.D.N.Y.L.R. 41.2(a); see also Fed. R. Civ. P. 41(b) (actions may be dismissed for failure of plaintiff to prosecute).


WHEREFORE, it is hereby

RECOMMENDED that if this action be dismissed for failure to complete service of process upon either defendant; and it is further

ORDERED that the Clerk serve a copy of this Order on Reinhart by regular mail and certified mail return receipt requested.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Small v. Secretary of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: February 23, 2012
Albany, New York


United States Magistrate Judge